

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD A. KIRKHAM,)	CASE NO. C05-1704-JCC-MAT
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
JOSEPH CHALVERUS, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff has presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983, and an application to proceed with this action *in forma pauperis*. Plaintiff alleges in his complaint that the attorney who is acting as standby counsel for purposes of plaintiff's state court criminal proceedings has denied plaintiff access to the courts, has lied to plaintiff and mislead him, and has frustrated plaintiff's efforts to prepare a defense. Plaintiff names as defendants in this action Joseph Chalverus, Attorney at Law, and the Law Office of Joseph Chalverus. Plaintiff seeks compensatory damages for Mr. Chalverus' allegedly unconstitutional conduct.

In order to sustain a civil rights action, a plaintiff must show (1) that he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) that the violation was

proximately caused by a person acting under color of state or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Neither private attorneys nor public defenders are considered state actors for purposes of bringing suit under § 1983. *See Polk County v. Dodson*, 454 U.S. 312 (1981)(a public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding). Because Mr. Chalverus is a private attorney, plaintiff may not maintain an action against him or his law firm under § 1983.

As it appears from the face of the complaint that the defendants named in this action are not subject to suit under § 1983, this Court recommends that plaintiff's application to proceed *in forma pauperis* be denied and this action be terminated. A proposed Order accompanies this Report and Recommendation.

DATED this 20th day of October, 2005.



Mary Alice Theiler
United States Magistrate Judge